



**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY**  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

**MEMORANDUM**

**SUBJECT:** Approval of Outside Teaching Activity

**FROM:** James Payne  
Designated Agency Ethics Official and Deputy General Counsel for  
Environmental Media and Regional Law Offices

**TO:** Carlton Waterhouse  
Deputy Assistant Administrator  
Office of Land and Emergency Management

I have received your request to continue to engage in compensated outside employment as an adjunct professor at the Howard University School of Law during the Spring semester of 2021. You will be teaching a property law course. Based on the information you have provided, I am approving your request as consistent with 5 Code of Regulations (C.F.R.) Part 2635, Subpart H, and as required by 5 C.F.R. § 2636.307. I want to remind you of the relevant ethics obligations as you undertake this activity:

**Financial Conflicts of Interest and Impartiality Rules**

Because you will be compensated by Howard University, you may be considered to be an employee (as opposed to an independent contractor). If so, you have an imputed financial interest in the law school pursuant to the criminal conflict of interest law, 18 United States Code (U.S.C.) § 208. This means that you may not participate in an EPA or other government matter that will have a direct and predictable effect on the law school's financial interests. As such, you may not participate personally and substantially in a particular matter that affects the financial interests of the law school as a specific party, such as a grant or procurement, or a decision for the Agency to financially support a conference at the law school. Also, you may not participate in an EPA matter of general applicability that will affect the law school's financial interests as a member of a discreet and identifiable class, such as a regulatory or legislative matter affecting all laws schools.

In addition, or, in the alternative if you are not an "employee," you have a "covered relationship" with the law school during the term of your teaching activity and for a year after the activity ends pursuant to the impartiality regulations. This means that

you may not participate in a specific party matter at EPA in which the law school is a party or represents a party if a reasonable person will question your impartiality, unless you are authorized to do so by me or Justina Fugh. See 5 C.F.R. § 2535.502. For example, you may not participate in your official capacity in a decision to grant a meeting with a law school representative, participate in, or recommend a colleague to participate in, a conference at the law school.

#### Representational restrictions

You are also prohibited by a criminal law from acting as an agent or attorney for the law school before a federal agency or court in any matter in which the United States is a party or has a direct and substantial interest. See 18 U.S.C § 205. In your capacity as an adjunct faculty member, you may not appear before or communicate with an officer or employee of a federal agency or court on behalf of the law school, which includes contacting federal employees to speak before your law school classes or at other law school activities in their official capacities.

#### Misuse of position

You may not use government time or resources, such as the official time of a subordinate, or your official title, other than as part of general biographical information that is given no more prominence than other aspects of your professional or educational background. Also, you may not use or disclose non-public information for the furtherance of this activity, or otherwise use your official position for the private gain of the law school. See *generally*, 5 C.F.R. Part 2635, Subpart G.

#### Outside earned income limitation

Because you are a non-career member of the Senior Executive Service, your outside earned income from all sources during 2021 may not exceed \$25,596<sup>i</sup>.

Finally, you will have to report both the income and the outside teaching position on your relevant financial disclosure form. As always, if you have any questions, please feel free to contact me at 202-564-0212 or Justina Fugh at 202-564-1786.

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<sup>i</sup> This amount is pro rated, as required by 5 C.F.R. § 2636.304(b).